IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7872 of 2005

Between:

Badvel Higher & Technical Educational Society, Nagarjupet, Cuddpah rep by Correspondnet, T. Shiva Shankar Reddy S/o T. Ramachandra Reddy

..... PETITIONER

AND

1 Government of Andhra Pradesh rep by Principal Secretary to Government School Education (Training-A1) Department at Secretariat, Hyderabad
2 Sri Venkateswra University, Tirupathi rep by through its Registrar

.....RESPONDENT(S

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or writs, order or direction, declaring the action of the 2nd respondent in keeping pending the application of the petitioner for grant of affiliation to college established by them to start B.Ed. Course, on the ground that the petitioner do not have permission from the State Government, as illegal and arbitrary and consequently direct the 2nd Respondent to forthwith grant affiliation to the college established by petitioner, for the year 2004-2005, as per section 14(6) of NCTDE Act, without insisting for grant of permission from the state Government; Award costs and pass such other or further orders as are deemed and pass such other or further orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR. N.SRIDHAR REDDY

Counsel for the Respondents : GP FOR SCHOOL EDUCATION

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.7872 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the alleged action of the 2nd respondent University in keeping pending the application of the petitioner for grant of affiliation to the College established by them to start B.Ed. course on the ground that the petitioner does not have permission from the State Government as arbitrary and illegal and for a consequential direction to the 2nd respondent to forthwith grant the affiliation as per Section 14(6) of The N.C.T.E. Act.

The petitioner claims that in pursuance of the No Objection Certificate granted by the State Government, they have applied to National Council for Teacher Education (N.C.T.E.) for grant of recognition and that the same was also granted by the N.C.T.E. Thereafter, the petitioner made an application to the 2nd respondent on 30-

03-2005 by remitting the required amount for grant of affiliation to the college established by them. It is alleged that the 2nd respondent has kept the said application pending on the ground that as per Norms of the University, the college will be considered for grant of provisional affiliation to start B.Ed. course only after obtaining N.C.T.E. recognition and permission from the Government to start the college and accordingly directed the petitioner orally to obtain permission from the Government and until such permission is obtained, no affiliation would be granted. Aggrieved by the said action of the 2nd respondent University, this writ petition is filed contending that the 2nd respondent is bound by the Rules and Regulations made under the N.C.T.E. Act particularly Section 14(6) of the Act which states that the University shall grant affiliation on an order being communicated under Section 14(4) of the Act. It is further contended that when an application is made for grant of affiliation, it is incumbent on the University to consider the same in accordance with law and pass appropriate orders either granting or rejecting the affiliation, but they cannot keep the same pending on the ground that the college concerned does not have permission from the State Government.

On behalf of the 2nd respondent University, a counter-affidavit has been filed by the Registrar of the University stating that the plea that the petitioner has submitted the proposal to the respondent University on 30-03-2005 is totally false. It is also stated that this Court while taking note of the submission of the Standing Counsel of the University that the petitioner has not made application for affiliation, adjourned the mater on 12-4-2005 to enable the respondent to file a counter-affidavit. Thereafter, the petitioner manipulated to submit the proposal in the office of the Dean, College Development Council (CDC), after working hours in the absence of Dean, CDC / Deputy Registrar (Academic) on 13-04-2005 at 5.30 pm and handed over the proposal to one Mr. B.Nagendra Kumar, Attender in the Office of the Dean, CDC and obtained an acknowledgment back-dating as 10-03-2005 which is contrary to his claim made in para-2 of the affidavit. On 14-04-2005, the said Attender confessed before the Dean, C.D.C. that he has taken the proposal possibly from the petitioner's representative on 13-04-2005 at 5.30 p.m. by giving an acknowledgment with the stamp of the Office of the Dean, CDC back-dating as 10-03-2005. He also accepted that he has taken a bribe of Rs.400/- and confessed the mistake done by him in writing. The University has initiated the disciplinary action against the said Attender

for his involvement in the said malpractice. The University is also contemplating to report the matter to the N.C.T.E. and also the State Government as per the provisions of Section 17(1) of the N.C.T.E. Act recommending withdrawal of the recognition extended by the N.C.T.E. Hence, the writ petition is liable to be dismissed apart from making the petitioner liable for prosecution, for perjury for giving false affidavit.

The petitioner has not filed any affidavit in Reply contradicting the stand taken by the 2nd respondent University in its counter-affidavit.

However, the learned Counsel for the petitioner across the Bar states that in para-2 of the affidavit inadvertently it was mentioned that the petitioner made an application to the 2nd respondent University on 30-03-2005. The learned Counsel for the petitioner further submitted that subsequently the petitioner submitted an application on 19-04-2005 in the office of the Registrar of the 2nd respondent University and therefore the 2nd respondent may be directed to consider the same and grant affiliation in accordance with law.

In the light of what has been stated in the counter-affidavit filed by the 2nd respondent, which remained unrebutted, it is clear that by the date of filing of the writ petition on 7-4-2005, the petitioner never made an application before the 2nd respondent University for grant of affiliation. May be that, the petitioner has subsequently made such an application on 19-04-2005, but the question is whether the petitioner who approached this Court swearing to a false affidavit is entitled to any relief in exercise of the discretionary powers under Article 226 of the Constitution of India.

There can be no dispute about the well settled principle of law that the discretionary relief under Article 226 cannot be granted in favour of an applicant who makes an incorrect statement or who suppresses the facts or who attempts to take undue and unfair advantage by misleading the Court in any way. A Division Bench of this Court

in IBIZA INDUSTRIES LIMITED v. UNION OF INDIA while considering an identical question held as under :

> *"Be it noted that a Prerogative Writ is not to be issued as a matter of course. The applicant must come in the manner prescribed and adopt a method which is otherwise in accordance with law and must be perfectly frank and open with the Court. There is an obligation on the part of applicant in an application under Article 226 to be candid and be otherwise fair to Court so as not to mislead the Court. The Doctrine of Uberrima Fides has its fullest application in a petition under Article 226. The Court is not to use a discretion in the event of there being any attempt on the part of the petitioner to mislead the Court."*

In the case on hand admittedly the petitioner has deliberately made a wrong statement before this Court. That apart the specific case of the 2nd respondent is that the petitioner attempted to create evidence to substantiate the wrong statement made in the affidavit by indulging in malpractices. In the circumstances and in the light of the settled legal position, I am of the view that the petitioner does not deserve any relief and the writ petition is liable to be dismissed in limine.

Accordingly, the Writ Petition is dismissed with costs quantified at Rs.2,000/- payable to the 2nd respondent.

However, it is left open to the petitioner to institute fresh proceedings for redressal of his grievance if he so chooses.

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25th April, 2005.

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To

1 The Principal Secretary, Government of Andhra Pradesh, Government School Education (Training-A1) Department at Secretariat, Hyderabad

2 The Registrar, Sri Venkateswra University, Tirupathi .

3. Two CCs to G.P. for School Education, High Court of AP Bldgs, Hyderabad (OUT).

4. Two CD copies.